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October 20, 1998

Jennifer H. Boyt, Esq. Federal Election Commission Office of the General Counsel 999 E Street, N.W. Washington, D.C. 20463

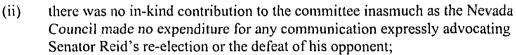
RE: MUR 4801

Dear Ms. Boyt:

The undersigned represent The Honorable Harry Reid, David Cherry and Gerald Reed in the above referenced MUR. This MUR was initiated based on a letter from a Jonathan Levenson to Senator Reid, alleging that Mr. Cherry, an aide to Senator Reid, called Mr. Levenson from Democratic Party headquarters to invite Mr. Levenson to a press conference to be held the following day by the Nevada Council of Senior Citizens (the "Nevada Council"). Mr. Levenson further alleges that Mr. Cherry had contacted members of the Nevada Council to solicit them to send "pre-written" letters to the editor of newspapers. Finally, Mr. Levenson alleges that another aide to Senator Reid, Mr. Gerald Reed, "made an uninvited and improper presentation, of a political nature" at a meeting of a local post of the Jewish War Veterans, and that a mention of the Nevada Council press conference was "inserted into" a Jewish War Veterans newsletter.

Mr. Levenson's letter does not set forth facts constituting any violation of the Federal Election Campaign Act of 1971, as amended (the "Act") or the Commission's regulations, nor do the facts surrounding this situation constitute any such violation. First, neither Senator Reid, Mr. Cherry or Mr. Reed, who have been named personally as respondents in this MUR, are alleged to have committed any violation of the Act or the Commission's regulations. Second, Senator Reid's campaign committee, Friends of Harry Reid, has not violated the Act or the Commission's rules because:

(i) the Nevada Council made no expenditure of any kind in connection with the press conference;



(iii) Mr. Reed appeared before the Jewish War Veterans meeting in his official capacity as an aide to Senator Reid, to discuss legislative issues of interest to the group, and did not refer to Senator Reid's candidacy or expressly advocate the reelection of Senator Reid or the defeat of his opponent.

For these reasons, the Commission should find no reason to believe that any of the respondents, or the Reid Committee, violated the Act or the Commission's regulations and should dismiss the complaint.

### FACTUAL BACKGROUND

#### A. The Nevada Council Press Conference

On June 30, 1998, David Cherry, the Deputy Press Secretary for Friends for Harry Reid telephoned Jonathan Levenson to invite him to a press conference that was being undertaken by the Nevada Council to publicize a voting record, previously prepared by the Nevada Council's parent organization, the National Council of Senior Citizens ("NCSC"), addressing the voting record of Senator Reid and other members of Congress regarding senior citizens. (Declaration of David Cherry attached hereto), ¶ 4. That voting record had previously been prepared and distributed by NCSC. There is no allegation in the complaint that the preparation and distribution of that voting record was in any way coordinated or discussed with the Reid Committee or any agent of Senator Reid, and, based on information and belief, in fact it was not.

Mr. Cherry had contacted Mr. Levenson at the request of Scott Watts, President of the Nevada Council. Mr. Cherry had spoken with Mr. Watts earlier that week. During that conversation, the possibility of holding a press conference to help publicize Mr. Reid's senior citizen record was discussed. Id. \ 2. Indeed the Senator's office had recently issued its own press release which publicized an article in Seniority, a bi-monthly magazine which is published by the NCSC. A courtesy copy of this magazine was sent to Members of Congress.

Upon receiving a copy of <u>Seniority</u> in late June of 1998, the Senator's office issued a press release publicizing the news article. About the same time, Mr. Cherry had spoken with Mr. Watts, and during that conversation, Mr. Cherry inquired as to whether the Nevada State Council of Senior Citizens would be publicizing the article, and the voting record of Senator Reid and other members of the Nevada delegation in connection with senior citizens issues. Id. ¶

2. Although Mr. Watts expressed interest in holding a press conference to publicize Senator

Reid's record, Mr. Watts indicated that he did not have the technical ability to organize a press conference. Since Mr. Cherry was experienced in holding press conferences he offered to assist Mr. Watts in putting on a press conference. Mr. Watts accepted Mr. Cherry's offer. Id. ¶ 3.

Mr. Cherry proceeded to assist Mr. Watts only by undertaking the following activities: (1) Mr. Cherry drafted two press releases for Mr. Watts which announced the event, a copy of which is attached hereto as Exhibit 1; (2) Mr. Cherry faxed the press release to approximately three dozen members of the media; (3) Mr. Cherry called three or four members of the Nevada Council of Senior Citizens to inform them of these press events; (4) Drafted a press release for distribution at the press conference. Id. ¶ 4. Mr. Cherry did not participate in any Nevada Council press conference, nor did he arrange any of the logistics for such a press conference. Id. ¶ 4. It appears that the Nevada Council eventually held two press conferences on July 1, 1998, one in Las Vegas, Nevada and the other in Reno, Nevada.

Mr. Levenson also complains that Mr. Cherry had contacted individuals and asked them to sign "pre-written letters to the editor," and that the above mentioned press conference was somehow "inserted into Jewish War Veterans Post #711 newsletter."

### B. The Appearance by Mr. Reed before the Jewish War Veterans

Mr. Levenson also complains about an "improper presentation" made by Mr. Gerald Reed, a legislative assistant to Senator Reid. On or about August 1, 1998, Mr. Reed was invited to make a presentation to the Jewish War Veterans at their monthly breakfast by Mr. Joseph Schwartz, a past Commander of the Jewish War Veterans. (Declaration of Gerald Reed attached hereto), ¶ 2. As a legislative assistant, it is quite common for Mr. Reed to appear before veterans' groups in Nevada to discuss veteran's issues, in order to keep Senator Reid's constituents informed of the Senator's positions and activities with respect to such issues. Upon arriving at the breakfast, Mr. Reed was told that he was not on the official agenda of the meeting, but that he was permitted to leave any materials that he had brought with him. Id. ¶ 3. A copy of the materials Mr. Reed left are attached as Exhibit 2.

Furthermore, Mr. Reed was told that, time permitting, he would be allowed to make a two-minute presentation at the close of the breakfast. Mr. Reed introduced himself as a member of Senator Reid's legislative staff and then made a short presentation regarding the status of veterans' issues and legislation affecting veterans. Id. ¶ 4. Mr. Reed's presentation made no reference whatsoever to Senator Reid's candidacy nor did he make any statements expressly advocating the election or defeat of any candidate. Id. ¶ 5.

#### DISCUSSION

### I. None of the Individual Respondents Are Alleged to Have Violated the Act or the Commission's Regulations

Mr. Levenson's letter is addressed to Senator Reid, and complains of the actions of Mr. Cherry and Mr. Reed. The complaint sets forth no facts suggesting any violation by Senator Reid himself of the Act or the Commission's regulations. In fact, the complaint does not refer to any actions or conduct of the Senator at all. Further, the complaint does not set forth any facts which, even if true, would amount to any violation of the Act or the Commission's regulations by Mr. Cherry or Mr. Reed. Nothing in the Act or the Commission's rules prohibits an individual associated with the campaign of a federal candidate from suggesting that an incorporated organization publicize, without expense, a voting record prepared independently by another organization. Nothing in the Act or the Commission's regulations prohibits or restricts an individual associated with the campaign of a federal candidate from soliciting members of the public to write letters to the editor of newspapers. The complaint does not allege otherwise.

Nor do the Act or the Commission's rules prohibit an individual member of the official staff of a Member of Congress from appearing before groups of constituents to address legislative issues of interest to those constituents.

For these reasons, it is clear that there is no basis whatsoever for having named Senator Reid, Mr. Cherry or Mr. Reed, individually, as respondents in this MUR. The complaint should be dismissed as to all of these individual respondents.

### II. The Reid Committee Did Not Violate the Act or the Commission's Regulations

The complaint makes no allegations against the Reid Committee. In any event, it is clear that there are no allegations to be made. Not only did none of the individual named respondents violate the Act or the Commission's rules, neither did Senator Reid's campaign committee, Friends of Harry Reid (the "Reid Committee").

### A. There Was No Contribution to or Expenditure By the Nevada Council

To the best of the knowledge of the Reid Committee, based on the publicly available facts, no costs were incurred by the Nevada Council in connection with the press conference. No paid communications were made by the Nevada Council at any time. Indeed, it appears that the only costs that may have been incurred in connection with the press conference were by the Reid Committee itself, for the staff time of Mr. Cherry and the minimal expense to the Reid

Committee of in preparing and disseminating a press advisory regarding the Nevada council press conferences.

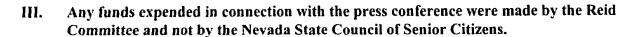
Accordingly, the Nevada Council, having incurred no cost or expense, did not make any contribution to, or any expenditure on behalf of, the Reid Committee. Therefore, the Reid Committee did not receive any such contribution or the benefit of any such expenditure and has not violated the Act or the Commission's rules by reason of Mr. Cherry's role in the Nevada Council press events.

### B. The Nevada Council Did Not Undertake Any Communication Expressly Advocating the Election or Defeat of Any Candidate

Even if there had been any costs to the Nevada Council associated with the press conferences, there would be no violation of the Act or the Commission's rules. Mr. Cherry acknowledges that he consulted with and assisted Mr. Watts in the preparation of a news conference to publicize a voter scorecard independently prepared by the Nevada Council's parent group, the National Council of Senior Citizens. The coordination with a federal candidate of a non-political communication made by an incorporated organization does not transform the costs of such a communication into an in-kind contribution by the organization to the candidate, if that communication does not expressly advocate the election of the candidate or the defeat of his opponent.

To be sure, the Act and the Commission's rules generally prohibit corporations from contributing or expending "anything of value" in connection with a federal election. 2 U.S.C. § 441b; 11 C.F.R. § 114.2. However, the Supreme Court, in order to ensure that election laws do not infringe on the robust debate of important public issues, has ruled that the Act must be construed to reach only communications that contain "express advocacy" of the election or defeat of a clearly identified candidate. Buckley v. Valeo, 424 U.S. 1 (1976); FEC v. Massachusetts Citizens for Life, 479 U.S. 238 (1986).

To the best of the knowledge of the Reid Committee, based on the facts known to it as set forth above, the Nevada Council's press conferences merely publicized the previously prepared voter "scorecard" and the voting records of Senator Reid and other Members of Congress. There was no express advocacy of the re-election of Senator Reid or the defeat of his opponent.



### C. The Solicitation of Letters to the Editor Does Not Violate the Act or Commission's Rules

Mr. Levenson complains that Mr. Cherry had requested that individuals sign letters to the editor, which Mr. Levenson alleges Mr. Cherry had already drafted. Even if that were true, requesting members of the public to write letters to the editors of newspapers clearly does not violate the Act or the Commission's rules.

The publication by a newspaper of letters to the editor does not constitute a "contribution" or "expenditure" under the Act. 2 U.S.C. § 431(9)(B)(i). Therefore, the solicitation by any individual, including a candidate's agent, of members of the public to write such letters cannot and does not implicate the Act or the Commission's rules.

### D. Mr. Reed's Appearance Before the Jewish War Veterans Chapter Was Entirely Lawful and Proper

As noted in the statement of facts above, at the time of his appearance before the Jewish War Veterans chapter, Mr. Reed was a full-time member of Senator Reid's official legislative staff. It was entirely normal and appropriate for Mr. Reed to appear before veterans' groups in Nevada to discuss the status of veterans' issues and legislation.

In his comments before the Jewish War Veterans group, Mr. Reed merely discussed such issues and legislation. He made no reference at all to Senator Reid's candidacy and did not expressly advocate the election or defeat of any candidate. Indeed, FEC regulations contemplate that Members of Congress or their representatives, can make non-campaign appearances before groups of constituents, provided that they do not discuss the Member's candidacy or advocate the election or defeat of any candidate. See, e.g., FEC Advisory Opinions 1996-11; 1992-6.

### D. There Was No Coordination of the Mention of the Nevada Council Press Conferences in the Jewish War Veterans Newsletter

Mr. Levenson asserts that an article that mentions the Nevada Council press conferences was "inserted" into a Jewish War Veterans newsletter. Mr. Levenson makes no allegations that any of the respondents, or the Reid Committee, had any involvement in the placement of this item in the newsletter. Indeed, neither the Reid Committee nor any of the individual respondents in this matter had anything to do with the placement of this small article in the newsletter.

### **CONCLUSION**

For the reasons stated above, neither any of the respondents, nor the Reid Committee, committed any violation whatsoever of the Act or the Commission's rules. Accordingly, the Commission should find no reason to believe that any respondent violated the Act or the Commission's rules and should dismiss the complaint.

Respectfully submitted,

Joseph E. Sandler

Neil P. Reiff

Attorneys for Respondents Senator Harry Reid, David Cherry and Gerald Reed

### BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of:	)	
	)	MUR 4789
Senator Harry Reid, David Cherry	)	
and Gerald Reed	)	

#### DECLARATION OF DAVID CHERRY

- I currently reside at 2325 Laurie Drive, Las Vegas, NV 89102. I am currently a Deputy 1. Press Secretary for Friends of Harry Reid. I am also a Deputy Spokesperson for the Nevada Democratic Party. I have held these positions since April, 1998.
- On or about June 29, 1998, I spoke with Scott Watts, President of the Nevada State Council of Senior Citizens ("Nevada Council"). During that conversation I inquired as to whether the Nevada Council would be publicizing an article from the magazine Seniority, which discussed the voting records of Senator Harry Reid and other members of Congress with regard to senior citizens issues. Although Mr. Watts expressed interest in holding a press conference to publicize Senator Reid's record, Mr. Watts indicated that he did not have the technical ability to organize a press conference. Ultimately, it is my understanding that the Nevada Council held two press conferences in Nevada on July 1, 1998, one in Las Vegas, and one in Reno.
- 3. Since I was experienced in holding press conferences, I offered to assist Mr. Watts in putting on a press conference. Mr. Watts accepted my offer.
- 4. I proceeded to assist Mr. Watts by (1) drafting two press releases for the press conference; (2) faxing the press release to approximately three dozen members of the media; (3) calling three or four members of the Nevada Council, including Jonathan Levenson, to inform them of the press conferences; (4) drafting a press release for distribution at the press conference. I did not participate in either of the press conferences, arrange any of the logistics for these press conferences or engage in any other activities other than the ones mentioned above in connection with the Nevada Council press conferences.

I declare under penalty of periury that the foregoing is true and correct. Executed on October 19, 1998.

Oct-19-98 10:38PM;

### BEFORE THE FEDERAL LLECTION COMMISSION

In the Matter of:	)	
	)	MUR 4789
Senator Harry Reid, David Cherry	)	
and Gerald Reed	)	

### DECLARATION OF GERALD REED

### Home Guard

- I currently reside at 11979 Homogurd Drive, Woodbridge, VA 22192. I am currently a legislative assistant for Senator Reid. I have held this position since May, 1997.
- On or about August 1, 1998, I attended, at the invitation of Joseph Schwartz, a past commander of the Jewish War Veterans, the monthly breakfast of the Jewish War Veterans, Post #65. I was asked to make a presentation regarding Senator Reid's legislative record on behalf of veterans.
- When I arrived at the meeting I was told that I would not be on the formal program, but that I was free to distribute any materials that I had brought, and that I would be coulded, time permitting, to make a short presentation at the conclusion of the breakfast.
- At the conclusion of the breakfast, I was permitted to make a two minute presentation. I introduced myself as a member of Senator Reid's legislative staff and limited my presentation to issues and legislation regarding veterans affairs.
- 5. At no time during my presentation did I make reference to the candidacy of Scnator Reid. nor at any time did I make any statements that expressly advocated the election or defeat of any candidate for any office.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 19, 1998.

### EXHIBIT 1

## Nevada State Council of Senior Citizens

2808 Pamela Place



Minden, NV 89423 Phone No.702-267-4411 Fax R

Fex No.702-267-3513

## SENIORS COUNCIL TO RELEASE CONGRESSIONAL SCORECARD

### \*\*\* NEWS ADVISORY \*\*\*

JULY 1, 1998

CONTACT: SCOTT WATTS (702) 267-4411

**Reno** -- The Nevada State Council of Scnior Citizens (NSCSC) will release its Congressional voting record for the 105th Congress at a news conference in Reno Wednesday beginning at 1:00 p.m.

Each year the National Council of Senior Citizens, NSCSC's parent organization, evaluates members of Congress to see how they voted on key senior issues such as Medicare and Medicaid, preserving Social Security and balancing the budget.

As part of Wednesday's event, NSCSC will highlight the records of Nevada Senators Harry Reid and Richard Bryan and Representatives John Ensign and Jim Gibbons.

Scorecard results will be available to the media on Wednesday along with reaction from Nevada seniors and members of the NSCSC Executive Board.

WHAT: CONGRESSIONAL SCORECARD RELEASE

WHO: NEVADA STATE COUNCIL OF SENIOR CITIZENS (NSCSC)

WHEN: WEDNESDAY, JULY 1, 1:00 P.M.

WHERE: CARPENTERS UNION AUDITORIUM 1150 E. TERMINAL LANE (BETWEEN MILL AND VASSAR)

## Nevada State Council of Senior Citizens



Minden, NV 89423 Phone No.702-267-4411 Fax N

Fax No.702-267-3513

## SENIORS COUNCIL TO RELEASE CONGRESSIONAL SCORECARD

### \*\*\* NEWS ADVISORY \*\*\*

June 30, 1998

CONTACT: Mike Aupperle 870-5305

Las Vegas -- The Nevada State Council of Senior Citizens (NSCSC) will release its scorecard for the 105<sup>th</sup> Congress at a news conference in Las Vegas <u>Wednesday</u> beginning at 10:00 a.m.

Each year the National Council of Senior Citizens, NSCSC's parent organization, evaluates members of Congress to see how they voted on key senior issues such as Medicare and Medicaid, preserving Social Security and balancing the budget.

As part of Wednesday's event, NSCSC will highlight the records of Nevada Senators Harry Reid and Richard Bryan and Representatives John Ensign and Jim Gibbons.

Scorecard results will be available to the media on Wednesday along with reaction from Nevada seniors and members of the NSCSC Executive Board.

WHAT: CONGRESSIONAL SCORECARD

**RELEASE** 

**WHO:** NEVADA STATE COUNCIL OF

**SENIOR CITIZENS (NSCSC)** 

WHEN: WEDNESDAY, JULY 1, 10:00 a.m.

WHERE: DULA GYMNASIUM STUDIO

441 EAST BONANZA

(BETWEEN MAIN AND L. V. BLVD. NEXT

TO L.V. SENIOR CENTER)

### EXHIBIT 2



# Senator Harry Reid's Report to Veterans

Volume 2, No. 1

Information for Nevada's Veterans

Spring 1998

### Message from Senator Reid

aintaining a strong and fair system of veterans' programs has been one of my top priorities in the United States Senate. From health care to retirement pay to disability benefits, veterans in Nevada and across the Nation deserve the best our country can give. As we seek to balance our budget, we must not lose sight of our continuing obligation to those who have served their country in defense of freedom and democracy.

### Veteran Spotlight:

### War Veterans Memorial Association of Western Nevada

ne of the greatest benefits of serving as a Senator is that I get to travel the State and meet the people of Nevada. I frequently meet people who selflessly make a tremendous difference in their communities. In this edition of my Report to Veterans, I am beginning a tradition of paying tribute to Nevada veterans who continue to serve the public and do great work for their community and our State.

The War Veterans Memorial Association of Western Nevada is just such a group. The War Memorial Association of Western Nevada was established in 1983 and is composed of veterans who are members of various veterans' groups which include: the Veterans of Foreign Wars of the United States, The American Legion and the Disabled American Veterans.

The War Veterans Memorial Association voluntarily travels throughout Western Nevada to conduct interment ceremonies. Without this group, veterans living in rural Nevada would not be honored with the full military honors that all veterans in good standing have earned. This group represents the best of Nevada and reminds us of the patriotic duty that all veterans have given this Nation. Thank you for a job well done!

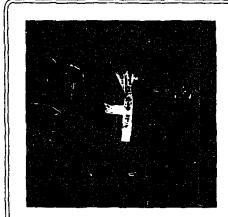
### **Medicare Subvention**

hile traveling throughout Nevada meeting with veterans, I frequently hear concerns expressed about Medicare "subvention." Medicare "subvention" means that the VA would be reimbursed for nonservice-connected care that the VA provides veterans who are also covered by Medicare. In other words, the VA would bill Medicare for health care rendered to veterans 65 years old and older.

Medicare subvention is good idea for veterans and for the American people. If the VA served additional veterans whose care currently is paid by Medicare, and if the VA provided that care less expensively than providers who would otherwise be reimbursed through Medicare, then real savings could be possible, both to taxpayers and to Medicare.

Last year, the Balanced Budget Act included a provision authorizing a Medicare Subvention Demonstration Project for veterans. Unfortunately, Senate and House Conferees on the Budget Committees decided not to include Medicare Subvention in the final compromise.

I intend to continue my efforts to pass Medicare subvention this year.



WWII veteran, Captain John Bowler, recipient of three bronze stars and survivor of the Bataan Death March, is congratulated by Senator Reid and Major General Drennan A. Clark, Adjutant General for the State of Nevada.

### gislative Accomplishments

or the first time, thirty years, our Nation's budget will be balanced. This was accomplished by practicing fiscal austerity and responsible decision-making on a national level, thereby spurring record economic growth. While balancing the budget has been an overriding goal for the past five years, I personally have worked at the same time to ensure that America's veterans will not unfairly bear the burden of our government's budget-balancing efforts.

An important component of the Balanced Budget Act of 1997 was a provision to allow VA health care networks to retain co-payments and insurance receipts for care of some patients. Previously, VA could keep only a small portion of collections needed to cover administrative costs. The bulk of the money was deposited in the U.S. Treasury. With enactment of the Balanced Budget Act, each geographic network of VA facilities will be allowed to keep the full amount it has collected. These funds will serve as a critical supplement to Congressional

appropriations for veterans' medical care. It is important that the funds be viewed as a supplement and not a substitute for Federal funding support for VA programs.

In addition to fighting for passage of the Balanced Budget Act, as a senior member on the Appropriations Committee, I successfully worked to get an increase of about \$326.7 million to the President's VA-HUD and Independent Agencies Appropriations bill last year. The appropriations bill provides a total of \$40 billion for veterans' programs, \$351 million more than appropriated in the previous year.

The VA/HUD appropriations bill restored the \$400 million cut that had been proposed earlier the year for veterans' health programs. The bill also included \$272 million for medical and prosthetic research; \$68 million for medical exams; and, \$19.9 billion for compensation and pensions for veterans with service-connected disabilities—an increase of \$33.7 million above current levels.

### Upcoming Year—Legislative Agenda

here are several very important legislative items that I will be working to get passed and signed into law. The President recently submitted the Department of Veterans Affairs FY 1999 budget, with a requested increase of nearly \$3 billion. The major components include funding for medical care, GI benefits and administration.

- Medical Care. The budget provides \$17.7 billion for medical care for eligible veterans. In order to continue to improve the delivery and access of outpatient care, the department will open 71 new outpatient clinics and treat 134,000 more veterans in 1999 than in 1998.
- Montgomery GI Bill and Readjustment Benefits. The budget proposes to increase mandatory Montgomery GI Bill education benefits by 20 percent, \$191 million—the most significant increase since the program's inception.

■ Veterans Benefits Administration. The budget provides \$806 million, \$52 million over the 1998 level to ensure the smooth delivery of compensation, housing, education, pension and insurance benefits to veterans.

I will fight for this year's VA budget that enhances benefits and service to veterans. In addition, I will redouble my effort to pass Medicare subvention. Furthermore, I will continue to champion initiatives that will improve the health care of veterans. I am an active co-sponsor S. 912. This bill will provide for certain military retirees and family members a special Medicare part B enrollment period during which the late enrollment penalty is waived, and a special Medigap open period during which no underwriting is permitted.

Another initiative that I co-sponsored is S. 1334. This is a bill to establish a demonstration project to evaluate the feasibility of the Federal Employees Health Benefits program to ensure the availability of adequate health care for Medicare-eligible beneficiaries under the military health care system.

### Ple Re rep

#### KEEPING IN TOUCH

Please feel free to contact me or my staff in my Washington D.C., Las Vegas, Reno and Carson City offices with questions or concerns you might have regarding these or any other issues. We value your input and stand ready to work with you.

Harry Reid in Nevada:

Washington Office: 528 Hart Senate Office Building Washington, DC 20510 Phone: (202) 224-3542

Phone: (202) 224-3542 Fax: (202)224-7327 Las Vegas: (702) 474-0041 Reno: (702) 686-5750 Carson City: (702) 882-7343

E-mail: senator\_reid@reid.senate.gov Online: http://www.senate.gov/~reid